

Idaho Division of Human Resources
Executive Branch Statewide Policy
Section 7: Telecommuting
Out-of-State Telecommuting Guidance and Expectations

Disclaimer: Out-of-state telecommuting is discouraged and will only be considered in compelling circumstances. This document is not intended to reduce an agency's authority to determine which positions are eligible for telecommuting in general or specifically for out-of-state telecommuting.

Purpose

This guidance is intended to provide information and awareness of the unique nature of out-of-state telecommuting requests. There are certain legal requirements impacting the State of Idaho (State) as an employer when considering out-of-state telecommuting for state employees. These requirements, outlined below, need to be researched by agency Human Resources (HR) staff and legal and are not fully addressed in this guidance.

All telecommuting requests must meet the requirements of the [Statewide Telecommuting Policy](#) prior to seeking approval for out-of-state telework.

Out-of-state telecommuting requests¹ must be reviewed and approved by the Division of Human Resources (DHR) Administrator prior to implementation. Failure to obtain approval prior to implementation may result in denial of the request.

Specific work location requirements by state are found at the end of this document and should be reviewed prior to a new request. The State of Idaho does not permit out-of-country telecommuting.

Considerations and Requirements for Out-of-State Telecommuting Requests

Telecommuting from other states creates legal uncertainty because Idaho law may not govern work performed outside of Idaho. Telecommuting from other states creates legal considerations related to the resident state's labor laws and employee benefits. In general, laws related to employment such as wage-and-hour, fair-employment, overtime, worker's compensation, parental leave, unemployment insurance, taxable income and withholdings, etc. are applied based on where the individual performs the work, i.e. the employee's state of residency for out-of-state telecommuting.

The following is a list of considerations the agency must explore and document prior to a request being approved. This list is not intended to be all inclusive, and requests must still be pre-approved by DHR. The agency and DHR retain full discretion to deny requests or to reverse approval if necessary.

Agencies should contact their Human Resource Officer to determine if specific states have been researched and/or approved in the past.

¹ Refer to section 7C.6 of Executive Branch Statewide Policy Section 7: Telecommuting.

Request and Approval for Out-of-State Telecommuting

The State of Idaho discourages out-of-state telecommuting, approving it only in rare circumstances. Various legal requirements affect the state as an employer when considering remote work arrangements outside Idaho, including laws related to employee benefits, wage regulations, fair employment practices, worker protections, and tax obligations. Additional factors such as security, equipment needs, time zone differences, supervision, and travel costs further contribute to the complexity of such arrangements.

The State of Idaho must comply with all applicable regulations for employees working outside Idaho.

Requirements and Initiation

Before requesting approval for out-of-state telecommuting from the DHR Administrator, agency appointing authorities must demonstrate:

- **Recruitment Efforts:** The position cannot be filled within Idaho, demonstrated by documented recruitment attempts, including advertising and hiring strategies and a lack of qualified applicants. For filled positions (i.e. the employee is moving out of state and the agency would like to retain them), you must demonstrate that similar positions or past recruitments have failed. In addition the agency should consider alternatives such as re-distribution of work and allowing flexible location (within Idaho).
- **Specialized Expertise:** The role can only be performed by the specific individual whose unique knowledge, skills, and abilities cannot be transferred to a new employee.
- **Fiscal Impact:** The agency must have sufficient budget to support all associated costs without requesting any additional funding.
- **Workforce Planning:** The agency has developed a comprehensive plan to ensure the position can be filled within Idaho within the next twelve (12) months.
- **Legal Implications:** The state in which the employee will work must not be on the Prohibited State List. Requests for prohibited states will be automatically denied.
- **Operational Viability:** The arrangement must support the agency's operational needs, including supervision, security, time zone, and travel requirements.

If the agency appointing authority has sufficient justification for requesting out of state telecommuting, the following steps must be taken.

1. Employee Completes Out of State Telecommuting Request Form (Employee)

- Employee submits a request to supervisor for out of state telecommuting using the [appropriate form](#).

2. Agency Supervisor (Agency)

- Supervisor reviews for operational and initial review. Supervisor submits to agency finance for review.

3. Agency Finance Reviews for fiscal impact (Agency)

- Agency finance reviews for any fiscal impact to the agency. Considerations include any required travel, equipment, workers' compensation coverage, and any other applicable costs.
- Agency finance must certify that the agency will be able to absorb the costs within their existing appropriation. If not, they must work with the Division of Financial Management to obtain prior approval for a budget submission request.

4. Agency Appointing authority reviews and submits the request to the DHR Human Resource Officer (Agency)

- Agency appointing authority certifies it meets the recruitment efforts, specialized expertise, financial feasibility and workforce planning requirements, legal and operational concerns.

5. Human Resource Officer Reviews Request (DHR)

- Human Resource Officer supporting the agency reviews the request to ensure that it meets the recruitment efforts, specialized expertise, financial feasibility and workforce planning requirements. The Human Resource Officer has more in-depth knowledge of the work of the agency and the organizational structure. HR Officer approval indicates a thorough review of these components. If supportive, the Human Resource Officer forwards the request to the DHR Operations Bureau Chief.

6. Human Resource Operations Bureau Chief (DHR)

- Operations Bureau Chief review in alignment with statewide perspective. If supportive, the Operations Bureau Chief forward the request for legal review.

7. Legal Review (DHR)

- DHR Operations Bureau Chief requests legal review of the state where the employee resides and has requested to telecommute from. Review will include the state's mandated benefits, tax, wage and labor laws, and pending legislation, as well as worker's compensation and unemployment insurance legal requirements that may impact employment in that state.
- Operations Bureau Chief communicates with HR Officer on approval/denial.

8. DHR Administrator Review (DHR)

- DHR Administrator reviews the justification submitted by the agency for the request for out of state telecommuting to determine if the request for out of state telecommuting is compelling and reasonable.
- DHR Administrator communicates with Agency appointing authority on any denials.

9. Payroll and Tax Request (DHR)

- Agency HR Officer submits a ticket to SCO - include the employee's name, employee ID number, agency contact, the state they are telecommuting in, and if it's a hybrid or 100% telework situation. SCO will create the HR location and set up the employee's HR Location correctly.
- SCO communicates with DHR regarding taxing expectations.
- DHR communicates taxing expectations to the employee and ensure that they update their residential address in the system.
- DHR verifies the employee's primary address is accurately reflected in the payroll system for taxing and payroll deductions.
- Employee must acknowledge in writing:
 - They are responsible for filing and paying state income taxes in each applicable state.
- DHR updates system to change to working remotely.
- Agency payroll must confirm withholding setup before the employee begins work in the out-of-state location.

10. Data Security and IT Requirements (Agency)

- Agency IT must confirm security setup before work begins, including (but not limited to):
 - Remote access configuration.
 - Compliance with State of Idaho IT security standards.

11. Unemployment Insurance (DHR & Agency)

- Unemployment laws apply where the work is performed. The legal review should include research on the local UI agency for the state in which the employee is physically located to understand how the employee will be covered. The Human Resource Officer communicates with appropriate agency finance personnel to ensure payment is made.

12. Risk Management Request (Agency)

- It is important to know coverage determinations are made on an individual basis for each worker based on their circumstances.
- Agency contacts a Risk Analyst at the Idaho Department of Administration, Risk Management, to discuss out-of-state coverage based on where the employee works. You may contact Risk via email at ADMRiskUnderwriting@adm.idaho.gov
 - Submit the [New Employee-All States WC Report completed with all information.](#)
 - Agency Finance work directly with Risk Management regarding the workers' compensation coverage and payment. There may be a requirement to set up state specific workers' compensation policies and payments for coverage with Risk Management.

13. Ensure Legal Compliance and Communication with Affected Employee (DHR)

- HR Officer will provide employee with applicable state and federal notifications
 - Inform the employee in writing that both Idaho law and applicable state law require these posters in each work “place” or “site.”
 - To avoid additional costs, offer the employee physical copies of each required poster on or before the employee’s last day in Idaho or offer emailed copies if the employee prefers to self-print them.
- Agency Payroll and HR Operations will ensure final payment of wages is in compliance with applicable state laws.

14. Annual Review and Approval (DHR)

- If approved by the DHR Administrator, DHR staff will execute necessary human resources and payroll actions. Approvals are granted for up to 12 months, requiring renewal requests at least 90 days before expiration from the appointing authority to allow for policy review and compliance adjustments.
- Human Resource Officer will request legal review of any changes to legal implications for all employees approved beyond 12 months. This should only be requested for extenuating circumstances.

Out-of-State Telecommuting Addendum

Out-of-State Work Location Requirements

This is a living document that will be updated as information is gathered/researched.

- **California**

Due to vastly differing employment laws and minimum wage laws, out-of-state requests for California will not be approved.

- **Colorado**

Colorado has minimum wage [laws](#) that are not comparable to Idaho. Out-of-state requests for Colorado will not be approved.

- **Montana**

Montana does not have “at-will” employment laws. As such, out-of-state requests for the state of Montana will not be approved for non-classified employees.

Given the potential for legal and employment implications, including compliance with different state employment laws and jurisdictional issues, it is unlikely out-of-state requests will be approved for classified employees.

- **Oklahoma**

The state of Idaho is not set up to withhold taxes in Oklahoma and would therefore be the employee’s responsibility to withhold. However, Oklahoma requires employers to withhold and if the employer does not, the employer may be penalized. Due to the contradiction, out-of-state requests for Oklahoma will not be approved.

- **Oregon**

Beginning in September 2023, employees working in Oregon are eligible for [Oregon Paid Family Medical Leave Insurance](#). This insurance provides employees with paid leave for family, medical, or safety reasons. The program does not allow employers or employees to opt out and requires both employers and employees to contribute into the program. For these purposes, only employees whose positions are required to work in the state of Oregon will be approved. Agencies with affected employees must post this [notice](#).

- **Vermont**

Vermont has a variety of [labor laws](#) that conflict with Idaho. Out-of-state requests for Vermont will not be approved.

- **Washington**

Employees working in Washington are eligible for [Washington Paid Leave](#). This insurance provides employees with paid leave for family or medical reasons. The

program does not allow employers or employees to opt out and requires both employers and employees to contribute into the program. For these purposes, out-of-state requests for Washington will not be approved.